

Judy Danelle Snyder, OSB No. 732834

E-mail: judy@jdsnyder.com

Holly Lloyd, OSB No. 942979

E-mail: holly@jdsnyder.com

LAW OFFICES OF JUDY SNYDER

1000 S.W. Broadway, Suite 2400

Portland, OR 97205

Telephone: (503) 228-5027

Facsimile: (503) 241-2249

Of Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

WAYNE BENSON,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Case No.

COMPLAINT

(Medical Negligence; Federal Tort Claims
Act, 28 U.S.C. § 1346(b))

PRELIMINARY STATEMENT

1. This action is an action for damages for medical negligence against defendant the United States of America under the Federal Tort Claims Act ("FTCA").

JURISDICTION

2. Jurisdiction is conferred upon this Court under 28 U.S.C. §1331 in that plaintiff's claim arises under the Federal Tort Claims Act, 28 USC §1346(b).

3. Venue is within the District of Oregon pursuant to 28 U.S.C. §1391(b) as the claim arose in this judicial district.

4. Divisional venue is within the Portland Division as the events occurred in Multnomah County.

PARTIES

5 Plaintiff is a service veteran who received medical and therapeutic treatment and services at the Portland Veterans Affairs Medical Center ("VAMC") located in Portland, Oregon.

6 Defendant United States Veterans Affairs owns and operates the Portland VAMC to provide medical care and services to military veterans.

GENERAL ALLEGATIONS

7. On August 29, 2016, plaintiff underwent a left total knee arthroplasty, a knee replacement, performed by Ted Vigelan, M.D. and assisted by Ryan Wallenberg, M.D. at the Portland VAMC.

8. At all material times, Dr. Vigelan and Dr. Wallenberg were medical doctors employed by defendant to provide medical services, including knee replacement surgeries, to military veterans at the Portland VAMC. At all material times, Dr. Vigelan was the Chief of Orthopaedics at the Portland VAMC. As the Chief of Orthopaedics and Attending Physician, Dr. Vigelan, was responsible for the training and supervision of Dr. Wallenberg, a resident physician, during plaintiff's surgery.

9. Plaintiff's recovery from the left total knee arthroplasty was prolonged and accompanied by significant pain and weakness. Defendant assured plaintiff that his knee was healing and that he was recovering as anticipated. Plaintiff was directed to participate in occupational therapy and physical therapy.

10. On May 17, 2017, plaintiff's left knee was evaluated by Dr. Vigeland and Joseph Ryan Langston, M.D., Orthopaedic Chief Resident. Plaintiff was told that his left knee implant was well positioned. He was instructed to participate in additional physical therapy to improve strength in his quadriceps and to use a brace to help stabilize his knee during ambulation. Plaintiff was directed to follow-up in three months for his one year post-operative evaluation. Plaintiff was told

that there was nothing available to further repair his knee and to correct the resulting low back pain, knee pain and instability.

11. Thereafter, plaintiff continued to suffer from pain, weakness, instability and stiffness in his left leg, limitations in rotating his left foot, difficulty walking, rising from, or lowering himself to, a sitting position, inability to place all of his weight on his left leg, or to ascend or descend stairs. Plaintiff also experienced significant low back pain and sciatica as a result of the unusual gait which he developed following the left total knee replacement.

12. In January of 2019, plaintiff was evaluated by a physician at Kaiser Permanente in Portland, Oregon. It was determined that plaintiff required surgery to remove the left knee implant that had been inserted at the Portland VAMC and to insert a replacement implant.

13. On April 2, 2019, plaintiff underwent surgery at Kaiser Permanente to replace the left total knee implant installed on August 29, 2016, as that implant was inserted at an improper angle, was loose and had caused a leg length discrepancy.

14. Plaintiff timely submitted his claim for medical negligence to the U.S. Department of Veterans Affairs, by letter dated March 23, 2018, receipt of which was acknowledged on April 17, 2018. The U.S. Department of Veterans Affairs, through the Office of General Counsel, denied the claim by letter of January 15, 2019. This claim is timely filed as it is within 6 months of the denial of the claim and within two years of the plaintiff's discovery of defendant's negligence.

CLAIM FOR RELIEF

Medical Negligence

15. Plaintiff realleges and incorporates paragraphs 1 through 14 above.

16. At all material times, the Portland VAMC and its physicians were negligent in one or more of the following particulars:

- a. in failing to align plaintiff's left knee implant to enable him to have a normal gait;
- b. in failing to select an implant in a proper size so it would remain securely

affixed to the bones of plaintiff's leg to which it was attached; and

- c. in creating a leg length discrepancy by the manner in which the left knee implant was inserted.

17. As a result of defendant's negligence, plaintiff suffered pain to his left and right knees and legs, weakness, instability and stiffness in his left leg, limitations in rotating his left foot, difficulty walking, rising from, or lowering himself to a sitting position, inability to place all of his weight on his left leg, or to ascend or descend stairs, low back pain and sciatica as a result of plaintiff's distorted gait, emotional distress, depression, loss of enjoyment of life, and interference to his normal activities all to his non-economic damages in the sum of \$850,000.00.

18. As a further result of the negligence of defendant, plaintiff was unable to continue his employment, lost wages and benefits, incurred medical expenses and care costs and expenses for household assistance, and plaintiff will incur in the future additional lost wages and benefits and medical expenses, therapies, and treatment, all to plaintiff's economic damage in the amount of \$575,919.00, plus such additional sums as shall be incurred in the future.

WHEREFORE, plaintiff prays for judgment against defendant in the amount of:

- a. \$850,000.00 for his non-economic damages;
- b. \$575,219.00, plus such additional sums as shall be incurred in the future for his economic damages; and
- c. Costs of this action.

DATED this 25th day of June, 2019.

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s/Judy Danelle Snyder
JUDY DANELLE SNYDER, OSB No. 732834
HOLLY LLOYD, OSB No. 942979
Telephone: (503) 228-5027
Facsimile: (503) 241-2249
Email: judy@jdsnyder.com
Email: holly@jdsnyder.com
Of Attorneys for Plaintiff